104

TRANSFER OF BLM'S OIL AND GAS LEASE DUTIES TO STATES

Y 4.R 31/3:104-102

HEARING

Transfer of BLM's Oil and Gas Lease...

THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

CLINTON ADMINISTRATION'S REINVENT GOVERNMENT II PROPOSAL TO TRANSFER THE BUREAU OF LAND MANAGEMENT'S (BLM) OIL AND GAS INSPECTION AND ENFORCEMENT FUNCTIONS TO THE VARIOUS STATES

SEPTEMBER 25, 1996—WASHINGTON, DC

Serial No. 104-102

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TRANSFER OF BLM'S OIL AND GAS LEASE DUTIES TO STATES

WEDNESDAY, SEPTEMBER 25, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
Washington, DC.

The subcommittee met, pursuant to call, at 2 p.m., in room 1324, Longworth House Office Building, Morris K. Udall room, Hon. Ken Calvert (chairman of the subcommittee) presiding.

STATEMENT OF HON. KEN CALVERT, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. CALVERT. The hearing will come to order. The Subcommittee meets to continue oversight on improving lease management of Federal oil and gas resources. Today's hearing is a follow-up to our June 20, 1996, hearing in which the Subcommittee reviewed the Clinton administration's Reinvent Government II proposal to transfer the Bureau of Land Management's (BLM) oil and gas inspection and enforcement functions to the various States. The Subcommittee is concerned that negotiations remain on track after adjournment of the 104th Congress and that a workable transfer of duties actually does occur.

It is my intent to seek assurances on the record from the BLM and from the representative of member States of the Interstate Oil and Gas Compact Commission (IOGCC) that all parties redouble their efforts to make the transfer of oil and gas leasing duties happen. In my view, there has been ample time for review and study of the details. Including the time the administration spent looking at this idea in the reinvention laboratory, it's been 2 years in the making. It's time to fish or cut bait. I believe Members from both sides of the aisle agree with that assessment, but we will hear from Mr. Abercrombie directly on that.

However, before turning over to my distinguished Ranking Member for an opening statement, I want to acknowledge that it's likely that this is the final hearing of the Subcommittee during the 104th Congress. And as such, I wish to thank the gentleman from Hawaii for his assistance over the last 2 years with the business of this Subcommittee. We have disagreed on some issues—such as State primacy under the Surface Mining Act—but your speaking skills from academia have been generally a welcome addition to the debate. You have been proven to be an equal opportunity critic. I appreciate that you have often questioned the administration witnesses as candidly as those with opposing views. I trust that if

your constituents return you to the 105th Congress, that you will continue your ways, including the questioning of those who testify for the Dole administration.

Mr. ABERCROMBIE. Thank you.

Mr. CALVERT. Well, I thank you gentlemen very much. Mr. Abercrombie?

STATEMENT OF HON. NEIL ABERCROMBIE, A U.S. REPRESENTATIVE FROM HAWAII

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman. And I, too, want to thank you, particularly in light of your last statement for your optimism. It's always welcome to have that in any political circle and I also appreciate being generously welcomed. That is something for which I strive and I do want to state quite sincerely how grateful I am to you for your kindness and courtesy; not only from you personally, but from the entire staff. And I do hope that we'll have the opportunity to continue to do good work in the future.

Mr. Chairman, I want to thank you particularly for scheduling this oversight hearing as a follow-up to the hearing held on June 20th. During the June 20th hearing, I asked for a proposal. And by the way, Mr. Chairman, I am reading my statement. As you know, I generally submit it. And I do want to read it today so that our panel can understand my situation and position. During the June 20 hearing, as you indicated in your remarks, I asked for a proposal to be prepared within 90 days of transfer of the oil and gas inspection and enforcement duties to the State, and I expected this to be a relatively simple task. There are many examples of this sort of delegation from the Federal Government to State: Clean Air, Cleaner Water, Waste Treatment, fruit fly inspection for papayas. I can go on. I also expected the bureau, the BLM, and the States to work together, to report back to us today that the work was completed and that the necessary documents signed, delegating the appropriate functions of those States interested in assuming a greater role in the Federal oil and gas leasing program. Clearly, this has not occurred. I have reviewed the June 20 transcript. Not just the testimony, but the transcript itself, Mr. Chairman, and I believe I spoke simply and clearly on this task, despite my academic background and my expectations for the BLM and the IOGCC. Yet, nothing substantive seems to have changed in the intervening 90 days. Some meetings have occurred; discussions have taken place, but no progress appears to have been made in the actual delegation to the States.

I do not understand why this task is so difficult to accomplish. It seems very straightforward to me, under Section 205 of the Federal Oil & Gas Royalty Management Act of 1982, the States have the right to seek delegation of certain functions relating to the oil and gas leasing program. And my understanding was that the administration wanted to accomplish this. The BLM itself has indicated an interest in accommodating this, and yet it is not happening, at least not at a pace that is measurable.

Unfortunately, this lack of progress raises doubts on my part. Is the BLM acting in good faith? Are the States being fair in their requests? Does the BLM perhaps think it can string this out indefi-

nitely, and avoid actually having to do something, perhaps, because this Congress is ending?

I will pursue my concerns in greater detail in the question and answer period after the witnesses present their statements. But Mr. Chairman, I want to indicate that I certainly cannot speak for you and other members of the Committee, but I believe we have a similar interest in this, that should we return to the Congress, I for one, if this is not completed—that is to say, that the standards have been set and the means for implementing it put into place—I am quite willing then to write legislation that will do it for everybody. I would prefer not to do that. I think legislatively, that is a court of last resort. But in the absence of it being accomplished, then I think it's our responsibility to move forward. Thank you very much.

Mr. CALVERT. Thank you, Mr. Abercrombie. And if in fact BLM doesn't move forward, I'll be happy to join your efforts to do exactly that.

Mr. ABERCROMBIE. I'm sure the Clinton administration will be happy to hear that.

Mr. CALVERT. He'll have plenty of time to read about it in Arkansas. First, I'd like to call Mr. Tipton to the witness stand, and also, Mr. Carter. Mr. Tipton is the Assistant Director, Resource Use and Protection, Bureau of Land Management. Mr. Tipton you may begin your testimony.

STATEMENT OF W. HORD TIPTON, ASSISTANT DIRECTOR, RESOURCE USE AND PROTECTION, BUREAU OF LAND MANAGEMENT

Mr. TIPTON. Thank you, Mr. Chairman, Members of the subcommittee. Mr. Carter and I both are pleased to be the clean up hitters for this last session of this subcommittee.

I also appreciate the opportunity to discuss the progress that we think we have made in working with the IOGCC and the oil and gas producing States to implement our Reinventing Government II proposal, as we call it, to allow States to perform oil and gas inspection and enforcement activities on Federal lands.

BLM has had discussions with a number of States to determine whether certain oil and gas inspection and enforcement responsibilities can be delegated to those States as authorized by Section 205 of the FOGRMA. With the cooperation of the States and the IOGCC, we firmly believe that we can develop agreements which will (1) improve program efficiency; (2) reduce cost savings to the BLM, States and taxpayers, and (3) maintain uniformly high performance standards, and (4) reduce the regulatory burden on industry.

Since the June 20, 1996 hearing, the BLM has worked diligently with the IOGCC and several States—individual States—to establish uniform standards and procedures for transferring oil and gas I&E responsibilities to individual State governments. In a BLM memorandum of instruction, we provided guidance to State Directors on standards and procedures that needed to be addressed when negotiating with State governments on the transfer of these activities. Based on the IOGCC recommendation, we also established a central point of contact within BLM to ensure negotiations

are conducted in a like manner and that the agreements that hopefully are reached will be consistent. Our meetings between BLM State offices and State government personnel indicate varying degrees of interest in taking on some of the responsibilities for the Federal I&E program. The State interest appears to be dependent on certain conditions of the transfer, such as the level of funding and whether Federal or State regulations will be used as the standard to measure industry compliance.

On September 12, 1996, the BLM met with the IOGCC in Omaha, Nebraska, to discuss its draft proposal for this transfer. This meeting provided an excellent forum to exchange ideas, to clarify processes and to discuss some of the problems associated with the transfer of the I&E functions. Our priorities continue to be to ensure improved program efficiency, to affect the cost savings, and to simplify compliance for operators. Upon review of the IOGCC's draft proposal, we find that we agree with portions of it. For example, we agree with their recommendation for purpose-by-purpose, side-by-side analysis of State and Federal statutes and rules to ensure that Federal objectives can be met by State programs. We also agree with recommendations for the State-by-State discussions and instituting changes in State programs to meet the Federal purposes.

Other areas of that proposal do not coincide with the step-by-step transfer process envisioned by the agency. As an example, at this time the BLM does not agree that violations should be written against State rather than Federal regulations, with appeals taken through State appeals and judicial bodies. The BLM does recognize and the IOGCC acknowledges that practices vary from State to State and could lead to a nationwide program marked by inconsistency; certainly, not a beneficial asset to producers. We will continue to pursue changes that reflect uniformity in application and interpretation of Federal laws to maintain this consistency and to simplify the process for producers.

Finally, the IOGCC has proposed State takeover of trust responsibilities that the BLM currently has with tribal lands. At first glance, current law does not permit the Secretary to delegate responsibilities to States without the consent of the tribe. And at this point, affected Indian tribes have indicated that they are not interested in the transfer of that responsibility from the BLM to the States. We will continue to honor our trust responsibility and obligations in carrying out the I&E transfer initiative.

In conclusion, as the BLM continues its negotiations with the State and the IOGCC to ensure successful transfer of the I&E responsibilities, we will emphasize some basic principles.

We want to streamline, simplify and consolidate Federal and State oil and gas regulatory programs on terms which will result in reduction of costs to the taxpayers.

Second, we want to simplify compliance for the operators, and third, to improve the effectiveness of the regulation of oil and gas exploration and production activities.

The BLM pledges to continue to work diligently with all parties involved to ensure these goals are met.

Mr. Chairman, I appreciate the opportunity to testify and will answer any questions you may have.

[The prepared statement of W. Hord Tipton may be found at the end of hearing.]

Mr. CALVERT. Thank you for your testimony. Next, Mr. Carter, Director of Utah Division of Oil, Gas, and Mining. You may begin your testimony.

STATEMENT OF JAMES CARTER, DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, UTAH DIVISION OF OIL, GAS, AND MINING

Mr. CARTER. Thank you, Mr. Chairman. I'm here testifying on behalf of the Interstate Oil and Gas Compact Commission. We appreciate the opportunity to appear before you again, to deliver the proposal and implementation plan the IOGCC has developed at your request over the last several months, and to report on progress the IOGCC and the BLM are making toward implementing the streamlining and consolidation of Federal and State oil and gas regulatory programs. The report of the Commission is attached to the testimony and I would ask that it be made part of the record of the hearing.

Mr. CHAIRMAN. Without objections, so ordered.

Mr. CARTER. Thank you. Just over ninety days ago, we were here to discuss the initial BLM REGO II proposal and the response of the IOGCC to that proposal. As Mr. Tipton mentioned, there have been additional productive discussions that have taken place between BLM representatives and State representatives, and that in some States, agreements are beginning to take shape. There have, however, been some bumps in the road and a great deal of work remains to be done. We're pleased to have the subcommittee's support for continuing discussions and ultimately, for implementation of memoranda of understanding between the BLM and the IOGCC States, which realize the benefits of reinventing the oil and gas regulatory program.

Unfortunately, there has been confusion on the part of some BLM and State representatives about the permissible scope of the discussions which are to take place. Instruction Memorandum 96–134, issued by the BLM the same day as our last oversight hearing on this matter, has been interpreted to allow only a yes or no answer to BLM's initial proposal to delegate to the States authority to enforce the Federal program regulations. The Instruction Memorandum establishes strict sideboards for Federal/State negotiations, such as "State operating programs will follow BLM's schedules and priorities" and that "enforcement procedures will follow Federal law and regulations." I've also attached a copy of a letter from Governor Frank Keating of Oklahoma, which states that the restrictions of Instruction Memorandum 96–134 "must be included in any negotiations." As a result, several State representatives have been told by their BLM counterparts that they lack the authority to discuss anything but State replication of the existing Federal program.

At a meeting several weeks ago, that Mr. Tipton mentioned, in Omaha, Nebraska, Mr. Bagley, Mr. Tipton and Mr. Eric Kaarlela of the BLM confirmed that the BLM wished the State directors to begin working with State regulators to evaluate the State and Federal regulatory programs to identify common objectives and per-

formance standards as bases for memoranda of agreement between the BLM and the States. We were informed that there will be a supplemental communication sent by BLM's Washington office to clarify that direction to BLM State directors. It is difficult to discern a direction to examine both State and Federal programs for improvement and streamlining opportunities from the language of Instruction Memorandum 96–134. The IOGCC is pleased that we appear to have reached agreement about the scope and objectives of BLM/State negotiations, but continues to believe a significant clarification is needed to clear up the counterproductive confusion that has been generated by that Instruction Memorandum.

There has also been some confusion about where State/BLM discussions should begin. The BLM's proposal addresses only inspection and enforcement functions, while the IOGCC counter-proposal suggests that all regulatory functions should be examined. The BLM has suggested that we begin with an evaluation of I&E functions, and move on to other areas of regulation if we achieve some success. The IOGCC agrees that we should start somewhere, and that inspection and enforcement is a good place because of the potential for savings and existing delegation/MOA authorities. However, the IOGCC remains convinced that evaluation of inspection and evaluation functions must take place in the context of the whole regulatory program if optimum program operation is the objective.

How should we proceed? The IOGCC has several specific suggestions to further the evaluation and negotiation process: First, we recommend that the BLM clarify to the States and its own State directors, its commitment to work with the IOGCC States to develop statements of common objectives and standards of State and Federal oil and gas regulatory programs. The IOGCC is hopeful that the clarification of Instruction Memorandum 96–134 will achieve that objective.

Second, the BLM should commit resources to a joint steering committee to guide the analysis and negotiations of the BLM and that States, and work with the BLM and the States to develop memoranda of agreement. The IOGCC sees the tasks of the steering committee to include first, development of statements of common program objectives and standards; second, establishment of a schedule for completion of BLM/State initial discussions; third, development of a strategy for industry and citizen involvement in brainstorming, plan development and memoranda of understanding; fourth, development of strategies to help individual States and BLM State offices conduct those evaluations; and fifth, actual development of memoranda of agreement.

Third, the BLM should commit to work with the IOGCC States, through the joint steering committee, to define and articulate the existing delegation and cooperative agreement of authorities, and recommend that any necessary regulatory or statutory changes.

And fourth, the BLM and the States should report to the Subcommittee on progress in developing joint objectives and standards on memoranda of agreement, and on regulatory and statutory needs in March or April of 1997.

I see that I'm running out of time here, so I'll close quickly. Standards evaluation is underway in several States. And in those

States, we are seeing that those in the field, who actually implement our oil and gas regulatory programs, have excellent ideas and common-sense suggestions for improving and streamlining our programs. As well, the regulated industry is an indispensable source of ideas and constructive suggestions. The IOGCC believes that we should encourage and support the creative process by bringing the stakeholders together, so that both Federal and State programs are changed for the better.

Again, we thank the subcommittee for their interest and are prepared to answer questions with regard to our recommendations.

[The prepared statement of James Carter and submissions may be found at the end of hearing.]

Mr. CALVERT. Thank you, Mr. Carter, for your testimony. Let us now begin questions. First, Mr. Tipton, your testimony speaks to the IOGCC proposal permitting conservation and Federal oversight. You are recommending an approach to first reach an agreement on requirements under FOGRMA, then transfer the inspection enforcement responsibilities to the States. Only after sufficient time has passed to review the success of the transfer would BLM be willing to discuss transfer of other parts of the program. You know, I look back, over eighteen months it has taken to get to this point in negotiations, and wonder about the time it will take to go through the motion as you describe in your testimony. I expect this administration to continue its work with the States, certainly through the time that we leave and until the next administration comes into office. And I expect that we will be looking into this in the next Congress, if action has not been taken.

This Subcommittee will continue its oversight role and pursue any legislative changes needed to implement this transfer—it was mentioned in earlier testimony.

What is the timeframe you are proposing to—finally, the question: What is the timeframe you are proposing to reach the final I&E transfer objective?

Mr. TIPTON. That's difficult to answer because we simply don't control all of the factors here. Our time table was to have much of this completed about a year ago. We completed our initial report. We had discussions with States which wanted to expand. We held our report off until, I believe March of this year. And we have extended invitations to all States to come and sit down and talk about, basically, whatever they would like to talk about. We have not gotten responses from all States. We do have responses from most States at this point. We have had meetings with the States and as Mr. Carter has acknowledged, there has been progress made. But that progress is slow.

We had hoped, again, to have at least the I&E portion completed by September of this year and by not being able to have the negotiations and discussions that we wanted, we were not able to get the agreement. I guess I need to point out that although 2 years ago we did propose this as a Federal proposal, we proposed it as optional to the States. We have not tried to force this down any of the States' throats. We have tried to make it as palatable to them and as enticing to them as we could and we set some guidelines that were articulated in memoranda to our field offices, to try to

instigate to keep some bounds on the discussion and to at least get things started.

We share the enthusiasm of all the parties here, to get on with this and to get some agreements. But frankly, it is a very complicated process. It's been tried before and it has not resulted in the products that people wanted. This time around we're trying to do it in building block fashion, and we would like to get the I&E on the table; work through some agreements on that; understand some different perspectives, Federal and State, and then use that progress—that relationship that comes from that—to move into whatever other discussions that the States are interested in.

Mr. CALVERT. Mr. Tipton, I guess I'm somewhat frustrated. I come from a business background and obviously you can't comment on a timeframe, so could you provide this Committee what time it is going to take in order for you to come up with a scope, an approximate time table to the Subcommittee? Is it going to take a week or a month or 2 months just to even come to a period of how long is this process going to take?

Mr. TIPTON. Well, sir, we have meetings scheduled with the remaining States that will be completed through November, with one exception. We also have proposed rules that are a key, in my mind, to resolving some of the differences between how we actually inspect once these transfers are made. Those will be proposed October the 1st, or as close to that date as we can get. And the flexibility that we are putting in these rules, hopefully, will draw us closer with the States and speed the negotiations up with the State, get some participation as to what the standard should look like. That seems to be stymieing our process toward coming to agreement.

I would accept as a target with Mr. Carter, around the first of the next year as a good target for reaching as much agreement as we can. But as complex and as big as the problem is, we simply think that if we're going to get anywhere, we have to do it one step at a time.

Mr. CALVERT. Mr. Abercrombie?

Mr. ABERCROMBIE. Thank you. Mr. Tipton, there's no more fierce defender of the role of the Federal Government with public lands in the West or anywhere else than myself. I think the record reflects that. Even the otherwise kind remarks of the Chairman, with the exception of the Surface Mining Act, I think would show that the record in this Subcommittee and in the Committee as a whole, and in my whole legislative life I have always thought that the role of government was to defend the public interest. And where public lands are concerned, I certainly hold to that theory of government. Now whether my judgment is good or our judgment is good as legislators, collectively, is something that has to be decided both by the voters and by posterity. But that obviously, or at least in my—the instance that I've just enunciated is that it is my goal. Now, in this instance then, if you take Section 205—and I'm referring to the—and I'm not going to try to do anything out of context to you here. This is from the Compilation of Selected Laws Concerning Minerals and mining, from the 103d Congress, our whole Committee, in January, 1993. Under the delegation to the States, I understand the part about the inspection and enforcement. That's Section 205(A). But when you go to Section 205(B) and all the sub-

sections—(B), (C), and (D), (E), and (F),and all the subsections under that, the power of the Secretary, i.e., yourself in this instance, as his delegate, and your section of the agency, the power of the Secretary is damn near absolute—which I have no disagreement with. I won't recite the whole thing, but the Secretary already has the power to delegate, under Section (B) through (F), to the States, other than inspections, audits and investigations, such authorities and responsibilities as the Secretary deems appropriate. Now the State has to provide adequate resources to achieve it, and if you, Mr. Carter, if you disagree with any of this, you tell me. The State has to provide adequate resources to achieve the purposes, that's determined by the Secretary, not the State. The State has to demonstrate that it will effectively and faithfully administer the rules and regulations of the Secretary, not what the State might want to do or not do. And the delegation shall not create an unreasonable burden. That's all that's talked about here. Now, that becomes a basis of discussion. Would you agree, Mr. Carter, what constitutes an unreasonable burden?

Mr. CARTER. I think that is the basis of the discussion.

Mr. ABERCROMBIE. OK. Now, then with respect to any of the lands, the Secretary promulgates the regulations that defines the functions. The Secretary shall rule and promulgate standards and regulations pertaining to the authority and responsibility that the State has to assume under any such agreement as to what is a reasonable burden. If the Secretary finds that any State to which any authority or responsibility has been delegated is in violation of the Section or the Rule or the Regulation, the Secretary can revoke the delegation. Do you agree, Mr. Carter?

Mr. CARTER. We do.

Mr. ABERCROMBIE. And the Secretary—that's the essence of it. So, I understand that there are those who disagree with my particular philosophy, with respect to public lands, at least as far as the stewardship of the Federal Government is concerned. But I believe that the law, as it is written right now, gives the Secretary and the Department more than sufficient opportunity to see to it that there's no land grab, if you will—and I don't mean this in any pejorative sense, Mr. Carter. I'm speaking generically—by any State, western or otherwise, to the degree that that's a question for some people. So, my point then is this, and I would like you both to comment on it—I will state what I believe is a summary of what has happened to this point. The States argue that to most effectively re-engineer or reinvent the onshore oil and gas programs, these discussions should include the entire regulatory program—not just the inspection and enforcement functions—since they believe that the transfer of only the I&E functions will not be cost effective, but will also not improve the management of the oil and gas leases on Federal lands. That's the reason. The BLM argues that, if I understand everything correctly, the transfer of only the I&E functions should occur now and be shown to work before discussing the permitting functions. Then if successful, to transfer the remaining delegable functions, primarily the approval to drill permits, could be transferred. I do think that the BLM may also fear the transferring and permitting functions would add to the credence of those in particularly the western States, who are inter-

ested in gaining full control of Federal land. But the administration has been generally supportive of increasing the State's role, and I think the royalty fairness bill, Mr. Chairman, demonstrates that. And we were able to come to a conclusion on that. And beyond the basic land use decision made by the BLM and the resource management plan, or general management plan, there are few if any functions that are inherently Federal. In other words, once we decide to take Federal land, public land, and put it to a use, such as is contemplated and for which you have responsibility, Mr. Carter, and your brethren and sisters in other States, once that takes place then and once the Secretary is satisfied that the States are carrying out the authority—carrying out the responsibilities assigned to it, including environmental protection compliance—then it seems to me that a cooperative agreement can and should be reached to do this. So in sum, what I'm saying is that all that's required here is the setting of standards and then movement to a memorandum of agreement. And that's what we wanted to get done. Now, I don't see any reason why you can't do that. Now, I will make this suggestion then in conclusion, and ask for your comments. My legislative life has revolved around two rules if you want to get something done. You go into a room and you sit down with all the parties. And there are only two rules that apply: Nobody leaves and nobody punches anybody. I mean it. Nobody leaves. Nobody punches anybody. If you obey those two rules, you come to an agreement. That's the only way you get legislation done. Now what I suggest then is to get all the parties together, if the States are serious Mr. Carter, you should all get together on a—you know, give yourself a weekend or whatever it takes, and, Mr. Tipton, pull everybody together. Sit down, work it out. Nobody leave, nobody punch anybody, and come back with an agreement. Any comments?

Mr. TIPTON. Well, Congressman, I find it difficult to disagree with anything that you've said.

Mr. ABERCROMBIE. I haven't threatened to punch you, so——

Mr. TIPTON. Focusing on coming to agreement on those standards, as you noted——

Mr. ABERCROMBIE. I think you're in the catbird seat on that.

Mr. TIPTON. Well, I was going to reflect on your arrestation of the requirement of the Secretary before he does any delegation; that being that having some assurances that his rules and his concerns and his interests would be protected through that delegation. And that seems to be the first hurdle we have to clear. Some of our States are talking with us in terms of sitting down and interpreting what those needs are, what those rules are, how we can get there. Some States are simply saying, we want to enforce the State standards and forget the Federal standards.

Mr. ABERCROMBIE. Well, we can't—it's not so much I'm interrupting, but let's have a colloquy here. They can't do that. If some State's doing that then that's stupid. And I don't think—they may try, just to see if you'll give on it. Now, you know, I suppose they're taking the attitude if you're dumb enough to give on it, they'll be smart enough to take. But the fact is that they know they can't get away with that. So what's the next step?

Mr. TIPTON. Well, sir, we can't force them to take a program if they're not willing to sit down and discuss how we achieve the Sec-

retary's interest to the delegation. All we can do is invite and be there and I'll——

Mr. ABERCROMBIE. I know, but once they understand that you're not going to simply accept a State's standard which is less than the Federal standard——

Mr. TIPTON. Then we're halfway there.

Mr. ABERCROMBIE. Well, I think you're more than halfway there. Once they understand that and any State that does that, honestly, I don't think that's very productive and I think they'd realize that soon enough, and other States would bring that to their attention. And if some State insists on that, then that State can stay out of the memorandum of agreement.

Mr. TIPTON. Well, sir, that's pretty much where it stands now.

Mr. ABERCROMBIE. OK, then Mr. Carter, you seem quite anxious to say something.

Mr. CARTER. I am. Let me jump in.

Mr. ABERCROMBIE. I know the body language. I've used it myself lots and lots of times in my life.

Mr. CARTER. This has taken some time to get to this point and I can't say that all of this time has been wasted because we've learned a whole lot about it, but it became apparent to the IOGCC States early on that it would be very easy to engage in a debate that sounded like—"the BLM says, you must do it our way; the States saying, no, we're going to do it our way." And it became apparent to the work group that I chaired that we weren't going to get anywhere with that argument. There's no place to go from there. So our approach, our recommendation is that we step out of that argument and instead say, let's have a discussion which sounds like, 11what are we all trying to achieve here?" You get out your law; we'll get out our law; we'll come to an agreement about what it is the purposes of our laws are. The States believe that we'll find that the purposes are very close, that the objectives of all of our regulatory programs are very close. Unlike coal in the late 1970's, where there's a great difference between what the Federal Government thought should be done and what some States thought, we think that we're going to be very, very close. Having done that, having established we are in agreement about the objectives of all of our regulatory programs or agreement about the standards of performance the industry must meet to successfully achieve these objectives, then we come up with a common program. I mean, this sounds quite ambitious, but we're convinced it's not going to be as much work as it sounds like. If we come up with a common program, we think we can then convince the Secretary to amend his rules and convince our State legislators and State rulemaking bodies to amend their rules, so that we're all operating on common standards. At that point, after we've done that piece of work, then we can say to the Secretary delegate to us, we can meet your regulations because your regulations are our regulations.

Mr. ABERCROMBIE. Wouldn't that all be incorporated in a memorandum of understanding?

Mr. CARTER. That's our proposal, that's the vehicle—rather than having delegation——

Mr. ABERCROMBIE. And isn't it clear from 205 and the Sections I quoted that the States have to meet the standards that are set?

Mr. CARTER. Right.

Mr. ABERCROMBIE. No, if they're unreasonable standards—and I understand in turn that that can be the subject of good faith and good will statements and proposals and discussions. But at a certain point the Hawaiians engage in what is called hoo pono pono. You have these—you sit down and you discuss these things and good faith is presumed and good will is presumed. And you do this until it is achieved. Exactly what you say, that a resolution is agreed upon between two parties. And generally, they'll start out with, this is what I want and the other person says, this is what I want. And they both realize very quickly they may not be able to have that. In this instance, the supremacy with respect to the standards rest with the Federal Government. But the Federal Government can't ask for more than what it itself is required to do, with respect to meeting standards. Isn't that—would you agree that that's the case, whether it's in safety or clean water or whatever it happens to be?

Mr. CARTER. We see the context of this discussion being a negotiation, rather than a strict—a delegation in the strictest sense, in that——

Mr. ABERCROMBIE. So you're not asking the Federal Government to give anything up? You're not saying, well let's lower this standard?

Mr. CARTER. We're saying, let us bid on your work. We've got a paint contractor outfit here and you guys are painting buildings; we think we can do it cheaper and just as well or better.

Mr. ABERCROMBIE. To your specifications?

Mr. CARTER. Right.

Mr. ABERCROMBIE. OK. You've been kind to indulge me this long, Mr. Chairman. My point, essentially, is I don't see any reason why this cannot be accomplished and protect the interests of everyone involved.

Mr. CALVERT. Thank you on that. Mrs. Chenoweth?

Mrs. CHENOWETH. Thank you, Mr. Chairman. Mr. Tipton, you indicated in your testimony that there was one State yet that you have not been able to meet with in your upcoming schedule to meet a deadline of having met with all the involved States, by October 1. Is that correct?

Mr. TIPTON. That's correct.

Mrs. CHENOWETH. Which State is that?

Mr. TIPTON. That's New Mexico.

Mrs. CHENOWETH. New Mexico? OK.

Mr. TIPTON. We've had some—I guess I should say, we have had some staff discussions, but we haven't had a formal response to actually sitting down and start drafting of a memorandum of understanding, or an agreement.

Mrs. CHENOWETH. Are you at the point where you can sit down? Have you been meeting with them?

Mr. TIPTON. We feel we've been at that point since March.

Mrs. CHENOWETH. OK. Let me ask Mr. Carter, you know, while I realize that you're representing the views for all the member States of the IOGCC, I can't help but note that your own State of Utah, home of a brand new national monument, set aside by the President, for multiple use, public lands, with no public comment

period, no EIS and certainly, no by or leave of Congress or of the Utah delegation. My constituents in Idaho are shocked by the ease with which this President can basically waive every procedural rule in the book when he wants to, yet, Americans have to jump through multiple hoops, and even smaller hoops at that, in order to receive a permit from the Forest Service or the BLM, to disturb the surface of public lands in even a very minor way, for mining or logging. Doesn't it seem extremely inconsistent to you, that the Department of Interior is so nervous about the States wanting expansion of responsibilities on public lands, when the President has just demonstrated how much muscle he has and how little he cares about the citizens of the West?

Mr. CARTER. I'll have to step out from under my IOGCC hat for a moment and just say that certainly I heard Governor Levitt speak on Saturday to the Utah Mining Association and express his displeasure about the means by which all this has come to pass. But as a resource program implementor in the State of Utah, we're not sure what all this means exactly to us; and so from my own perspective I just have to sort of wait and see what the Bureau of Land Management—a planning process was announced and we are looking forward to that planning process taking place in good faith. And that a comprehensive look be taken at the area and the best choices be made for its management, but it was a surprise to all of us.

Mrs. CHENOWETH. Did you receive notice at all on this action?

Mr. CARTER. I certainly did not, and I was informed by those who would know, that they had first learned of it from a Washington Post article two Saturdays ago—three Saturdays ago.

Mrs. CHENOWETH. Amazing.

Mr. CARTER. That was my understanding.

Mrs. CHENOWETH. Well, Mr. Tipton, Mr. Carter, I'm—I see we have a vote and I'm going to yield back the balance of my time. Thank you.

Mr. CALVERT. All right. I'm sorry. To finish, any further comments, Mr. Abercrombie?

Mr. ABERCROMBIE. I think, Mr. Chairman, perhaps we could take this up in another hearing context.

Mr. CALVERT. Fine.

Mr. ABERCROMBIE. Another hearing context.

Mr. CALVERT. Fine. I'm sure we're going to hear about it as part of the 105th.

Mr. ABERCROMBIE. Yes. And I think we'll address it, but because of the vote situation, Mr. Chairman, I would like to suggest that I think we've made our position pretty clear to all parties and perhaps we might indicate—I would be willing to indicate to you that should we return—and I have every intention of returning—that we will—I will certainly pledge to you to work to put legislation together, although I say that reluctantly because I don't think one size necessarily fits all. Legislation tends to do that. So I would urge that we kind of try to set a deadline and say, come up with what we believe can be done and then we could avoid that unhappy circumstance of having to put something together. But I certainly pledge to you that I would be willing to do that if—in the absence of a memorandum of understanding on the standards.

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Mr. CALVERT. I would share in that. I also intend to come back and I think we can work well together to make sure that if this agreement isn't entered into, then we will make sure that we draft our own agreement. And I would suspect that for both parties, that you would rather do it yourselves. With that, we have the new portrait of our Chairman, Chairman Young leering upon us, and he expects us to get this agreement done. With that——

Mr. ABERCROMBIE. Yes. Mr. Chairman, before you conclude, I would like to say for the record that I did have the privilege of attending the ceremony yesterday in the Ways and Means room, where in order to accommodate the crowd, a bigger room had to be used. And I want to say that it was an honor, a privilege to be able to be there for the unveiling. I do think the portrait reflects the integrity and sense of purpose that Chairman Young has exhibited throughout his career. And that I consider it equally an honor and a privilege to have served on a committee with and under his Chairmanship.

Mr. CALVERT. Thank you, and I'm sure he appreciates those remarks. With that, this committee is adjourned.

[Whereupon, at 2:55 p.m., the subcommittee was adjourned, and the following was submitted for the record:]

TESTIMONY OF W. HORD TIPTON
Assistant Director, Resource Use and Protection
BUREAU OF LAND MANAGEMENT

Before the House of Representatives Subcommittee on Energy and Mineral Resources

FOLLOW-UP OVERSIGHT HEARING ON THE PROPOSAL TO TRANSFER INSPECTION AND ENFORCEMENT ACTIVITIES TO THE STATES

September 25, 1996

Mr. Chairman, Members of the subcommittee, I appreciate the opportunity to discuss the progress we have made in working with the Interstate Oil and Gas Compact Commission (IOGCC) and the oil and gas producing States to implement our REGO II proposal to allow States to perform oil and gas inspection and enforcement (I&E) activities on Federal lands. The Bureau of Land Management (BLM) has entered into discussions with a number of States to determine whether certain oil and gas inspection and enforcement responsibilities can be delegated to those States as authorized by Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). We are confident that, with the cooperation of the States and the IOGCC, we can develop agreements which improve program efficiency, produce cost savings to the BLM, States and taxpayers, maintain uniformly high performance standards, and reduce the regulatory burden on industry.

Since the June 20, 1996 hearing, the BLM has worked with the IOGCC and the individual States in an attempt to establish uniform standards and procedures for transferring oil and gas I&E responsibilities to individual State governments. Our first directive, embodied in IM-96-134, a BLM memorandum, provided guidance to State Directors on standards and procedures that needed to be addressed when negotiating with State governments on the transfer of I&E

responsibilities. In addition, based upon the IOGCC's recommendation, we established a central point of contact within the Bureau to ensure that negotiations are conducted in a like manner and that agreements reached are consistent. All agreements must be reviewed and approved by the BLM Director prior to implementation. Meetings between BLM State offices and State government personnel indicate varying degrees of interest by States in taking on some of the responsibilities for the Federal I&E program. State interest appears to be dependent on certain conditions of the transfer, such as level of funding and whether Federal or State regulations will be used as the standard to measure industry compliance.

The IOGCC's draft proposal for streamlining and consolidating Federal and State oil and gas regulatory programs includes provisions for transferring not only I&E and production accountability activities, but also responsibilities relative to permitting, conservation, and Federal oversight. As we have previously testified, the BLM views that approach as premature. The BLM continues to believe the transfer of I&E responsibilities is the first step towards possible future discussions of transfer of these additional responsibilities. We believe it important to reach agreement on how to accomplish the requirements of FOGRMA with respect to production accountability and accepted inspection standards. After these efforts are achieved can we accomplish the first step, transferring I&E. Once we are able to gauge the success of the I&E transfer, we can then enter into further discussions to transfer other portions of the oil and gas program.

On September 12, 1996, the BLM met with the IOGCC in Omaha, Nebraska to discuss its

draft proposal for transfer. This meeting provided an excellent forum to exchange ideas and clarify processes associated with the transfer of I&E functions. The BLM's priority continues to be to ensure improved program efficiency, cost savings and simplification of compliance for operators. In line with this effort, we agree with portions of the IOGCC's draft proposal. For example, we agree with their recommendation for purpose-by-purpose, side-by-side analysis of State and Federal statutes and rules to ensure that Federal objectives can be met by State programs. We also agree with recommendations for State-by-State discussions, and instituting changes in State programs to meet Federal purposes.

However, other areas of that proposal do not coincide with the step-by-step transfer process envisioned by the agency. At this time, the BLM does not agree that violations should be written against State rather than Federal regulations, with appeals taken through State appeals and judicial bodies. The BLM recognizes and the IOGCC's acknowledges that practices vary from State-to-State. This would lead to a nationwide program marked by inconsistency; certainly not what is beneficial to producers. Accordingly, we will continue to pursue changes that reflect uniformity in application and interpretation of Federal laws so as to maintain consistency and simplify the process for producers.

Finally, the IOGCC has proposed State takeover of trust responsibilities that the BLM currently has with tribal lands. Current law does not permit the Secretary to delegate responsibilities to States without the consent of the Tribe; and affected Indian Tribes have indicated that they are not interested in the transfer of that responsibility from the BLM to the

States. We have and will continue to honor our trust obligation in carrying out the I&E transfer initiative.

CONCLUSION

As the BLM continues its negotiations with the States and the IOGCC, to ensure successful transfer of I&E responsibilities, we will keep in mind the purpose of this exercise:

(1) to streamline, simplify and consolidate Federal and State oil and gas regulatory programs on terms which will result in reduction of costs to the taxpayers;

(2) to simplify compliance for the operators; and

(3) to improve the effectiveness of the regulation of oil and gas exploration and production activities.

The BLM will continue to work diligently with all parties involved to ensure these goals are met.

Mr. Chairman, I appreciate the opportunity to testify before the Committee and will answer any questions the members might have at this time.

PREPARED STATE OF JAMES W. CARTER

Testimony of
The Interstate Oil and Gas Compact Commission
by
James W. Carter
Director, Utah Division of Oil, Gas and Mining

Submitted to the
U.S. House of Representatives
Committee on Resources
Subcommittee on Energy and Mineral Resources

September 25, 1996

Mr. Chairman and members of the committee, we are pleased to have the opportunity to appear before you again to deliver the proposal and implementation plan the IOGCC has developed at your request, and to report on the progress the IOGCC and the BLM are making toward implementing the streamlining and consolidation of federal and state oil and gas regulatory programs. That report is attached, and I ask that it be made part of the record of this hearing.

Just over ninety days ago, we were here to discuss the initial BLM REGO II proposal and the response of the IOGCC to that proposal. I am pleased to report that additional productive discussions have taken place between BLM representatives and the states, and that agreements are beginning to take shape in several states. There have, however, been some bumps in the road, and a great deal of work remains to be done. We're pleased to have the subcommittee's support for continuing discussions and, ultimately, implementation of memoranda of understanding between the BLM and IOGCC states which realize the benefits of reinvention of the oil and gas regulatory program.

First, the good news. The BLM has identified a knowledgeable and creative representative in the person of Lonny Bagley, stationed in the BLM's Montana Field Office, to facilitate BLM\state discussions exploring opportunities for program improvement and cost savings. Mr. Bagley has met with representatives of several states to date, both eastern and western. Those states report that the meetings were informative and productive, and that they are moving forward. As you heard several months ago, California and Colorado have entered into memoranda of agreement covering pieces of the regulatory program, and productive discussions continue in several more states.

Unfortunately, there has been confusion on the part of some BLM and state representatives about the permissable scope of the discussions which are to take place. Instruction Memorandum 96-

134, issued by the BLM the same day as our last oversight hearing on this matter (copy attached), has been interpreted to allow only a yes or no answer to BLM's initial proposal to delegate to the states authority to enforce the federal program regulations. IM 96-134 establishes strict sideboards for federal/state negotiations such as "State operated programs will follow BLM's schedules and priorities..." and that "enforcement procedures will follow federal law and regulations. Also attached is a copy of a letter to Governor Frank Keating of Oklahoma which states that the restrictions of Instruction Memorandum 96-134 "must be included in any negotiations:" As a result, several state representatives have been told by their BLM counterparts they lack the authority to discuss anything but state replication of the existing federal program.

At a meeting two weeks ago of the IOGCC Public Lands Committee workgroup, Mr. Bagley, Mr. Tipton and Mr. Eric Kaarlela of the BLM confirmed that the BLM wished their state directors to begin working with state regulators to evaluate the state and federal regulatory programs to identify common objectives and performance standards as bases for memoranda of agreement between the BLM and the states. We were informed that a supplemental communication will be sent by the BLM's Washington office to clarify that direction to BLM state directors. It is difficult to discern a direction to examine both state and federal programs for improvement and streamlining opportunities from the language of Instruction Memorandum 96-134. The IOGCC is pleased that we appear to have reached agreement about the scope and objectives of BLM/state negotiations, but believes a significant clarification is needed to clear up the counterproductive confusion generated by Instruction Memorandum 96-134.

There has also been confusion about where state/BLM discussions should begin. The BLM's proposal addresses only inspection and enforcement (I&E) functions, while the IOGCC counter-proposal suggests that all regulatory functions should be examined. The BLM has suggested that we begin with evaluation of I&E functions, and move on to other areas of regulation if we achieve some success. The IOGCC agrees that we should start somewhere, and that inspection and enforcement is a good place, because of the potential for savings and existing delegation/MOA authority. However, the IOGCC remains convinced that evaluation of I&E functions must take place in the context of the whole regulatory program if optimum program operation is the objective. One-stop permitting, conservation, I&E and enforcement should remain our goal.

How should we proceed? The IOGCC has several specific suggestions to further the evaluation and negotiation process:

1) The BLM should clarify to the states and its state directors its commitment to work with the IOGCC states to develop statements of the common objectives of state and federal oil and gas regulatory programs. The IOGCC is hopeful that the clarification of Instruction Memorandum 96-134 proposed by the BLM will achieve this objective.

2) The BLM should commit resources to a joint steering committee to guide the analysis and negotiations of the BLM and the states, and work with the BLM and the states to develop memoranda of agreement. The IOGCC sees the tasks of the steering committee to include: 1) establishment of a schedule for completion of BLM/state initial discussions; 2) development of a strategy for industry and citizen involvement in brainstorming, plan development and memoranda of understanding; 3) development of strategies to help individual states and BLM state offices to conduct program evaluations; 4) development of statements of common program objectives; and 5) development of memoranda of agreement.

3) The BLM should commit to work with the IOGCC states, through the joint steering committee, to define and articulate the existing delegation, cooperative agreement and contracting authorities for memoranda of understanding between the BLM and the states, and to identify any needed regulatory or statutory changes.

4) The BLM and the states should report to the Subcommittee on progress in developing joint standards and memoranda of agreement, and on regulatory and statutory needs in March or April, 1997.

The process of comparing federal and state requirements and developing common standards has begun in several states. As Ms. MIller reported to you in June, the BLM and the State of California have reached agreement on many aspects of the regulatory program. Standards evaluation is currently underway in Colorado and Utah as well. We are seeing that those in the field, who actually implement our oil and gas regulatory programs, have excellent ideas and common-sense suggestions for improving and streamlining our programs. As well, the regulated industry is an indispensable source of ideas and constructive suggestions. The IOGCC believes we should encourage and support the creative process by bringing the stakeholders together, so that both federal and state programs are changed for the better.

We again thank the Subcommittee for their interest in and support for the improvement of the regulatory programs the BLM and the states administer.

IOGCC PROPOSAL FOR THE STREAMLINING AND CONSOLIDATION OF STATE AND FEDERAL OIL AND GAS REGULATORY PROGRAMS

INTRODUCTION

In March, 1995, the Bureau of Land Management proposed the transfer of certain oil and gas regulatory functions to the states and tribes as part of Vice President Gore's Reinventing Government II (REGO II) proposal. In April of this year, the Interstate Oil and Gas Compact Commission (IOGCC) delivered a counter-proposal to the BLM and the Department of the Interior on behalf of its twenty-nine member states. This report constitutes the implementation plan for IOGCC's April 1996 proposal.

Because the circumstances, degree of overlap of state and federal regulatory functions, and the organization and operation of state and federal regulatory programs vary from state to state, this implementation plan is offered as an approach for the successful streamlining and consolidation of federal and state oil and gas regulatory programs, the specifics of which must be worked out through negotiations between the BLM and the states on a state-by-state basis. The efficiencies and cost savings available, and the levels of federal funding which will be required in each state, will vary. The overall objectives of the effort remain, however, improved program efficiencies, cost savings to both the states and the federal government, maintenance of uniformly high performance standards and reduced regulatory burden on the operating community.

DIFFERENCE BETWEEN THE BLM AND IOGCC PROPOSALS

The BLM's initial proposal was to transfer oil and gas inspection functions to the states based on the delegation and cooperative agreement authorities contained in the Federal Oil and Gas Royalty Management Act (FOGRMA) and its implementing regulations. Those regulations authorize the Director of the BLM to "..delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on federal lands..", and provide that; "Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary." 43 CFR 3191.1-1.

By Instruction Memorandum No. 96-134, dated June 20, 1996, the BLM directed that, in addition to the requirements of the federal rules, delegations and cooperative agreements must also; 1) follow FOGRMA required priorities, 2) utilize federal standards, 3) follow BLM's schedules and priorities, 4) specify methods, inspection standards, inspection costs and frequencies, 5) document inspections through hard copies, 6) maintain BLM's automated AIRS and AFMSS data systems, and 7) enforce against federal law and regulations (copy attached). Instruction Memorandum 96-134 also proposes BLM oversight of state implementation "..to ensure that federal statutes and regulations are uniformly interpreted." The IOGCC reads Instruction Memorandum 96-134 to propose that the states perform inspection and enforcement activities pursuant to the same rules and in the same manner as the BLM now performs them.

The IOGCC proposal, in contrast, is for the BLM and the states to re-engineer their oil and gas regulatory programs, through identification of duplication of effort, overlapping regulations and inefficient implementation techniques, to optimize the effectiveness and efficiency of state and federal programs, and to reduce the regulatory burden on operators. The IOGCC proposes that the BLM then negotiate with the states, on a state by state basis, for state performance of oil and gas regulatory activities on federal leases in accordance with mutually agreed-upon performance standards, and reimbursement of state expenses of implementation. The results of this effort will be more efficient state and federal programs, consolidation of regulatory functions where it makes sense, more consistency between state and federal regulatory requirements and, the IOGCC believes, substantial cost savings.

IMPLEMENTATION OF THE IOGCC PROPOSAL

In its April 1996 proposal, the IOGCC identified three broad functions of an oil and gas regulatory program, and two important administrative considerations for a delegation of responsibilities. This implementation proposal addresses those five activities and several significant subdivisions of those activities.

I. COMPLIANCE AND ENFORCEMENT **To the extent agreed upon by BLM and individual states, all field compliance and enforcement activities should be consolidated into existing state regulatory programs.**

Both the BLM and the states conduct field inspection and compliance activities for the following purposes:

1. To ensure that surface facilities and wellsite are constructed in accordance with adequate standards,
2. To ensure that the technical requirements for drilling rig and well set up and operation are met,
3. To ensure adequate well control during drilling, production and abandonment,
4. To ensure protection of other natural resources and the environment,
5. To ensure that safety and public health requirements are met,
6. To ensure that plugging and abandonment requirements are met, and
7. To ensure that the wellsite is properly reclaimed.

BLM also conducts field inspections to ensure compliance with federal lease stipulations. To the extent lease stipulations are incorporated as part of the APD approval, states can also inspect for lease stipulation compliance.

The purposes for and objectives of both state and federal field inspections are virtually identical. IOGCC states believe that the states' required standards of performance are as effective as or more stringent than federal standards. Insofar as a state regulatory program meets the objectives and standards of the federal regulatory program, the Bureau of Land Management should defer to state enforcement of the state's regulatory program.

With regard to the maintenance of data bases and information sharing, compatibility of the states' data bases and ease of reporting for industry operators are the most important considerations. The IOGCC has convened a data standardization committee which has been working for several years to bring about greater standardization of data reported and recorded to achieve those purposes.

Recommendation. IOGCC recommends a purpose-by-purpose side-by-side analysis of state and federal statutes and rules to ensure that all the objectives of the federal compliance and enforcement program will be met by state programs. To the extent state programs must be amended to address all the purposes the federal compliance program, IOGCC states are willing to engage in state-by-state discussions of the changes deemed necessary. The

states will commit to adequate training for all inspectors to ensure high-level performance of the compliance and enforcement program. Violations should be written against state regulations rather than federal regulations, with appeals taken through state administrative and judicial processes.

Benefits. Compliance and enforcement is an area in which re-engineering the processes of state and federal programs to recognize their common purposes holds tremendous opportunities for streamlining, efficiency and cost savings. In states where federal wells are inspected by both federal and state inspectors, one set of inspections can cease. Operators in states where inspection is successfully consolidated will need to meet only one set of inspection criteria. As the work of the IOGCC standardization committee proceeds, and additional consolidations occur, the regulatory programs of the states and the BLM will become more alike, simplifying compliance for interstate operators.

Authorities. The IOGCC believes BLM's existing rules allow for the BLM to enter into memoranda of understanding with states to defer to state regulation of federal wells.

II. PRODUCTION ACCOUNTABILITY **Production accountability should be ensured through a reporting and audit-based program, with field checking of reporting discrepancies and field surveillance of potential problem sites and areas.**

The IOGCC states have a greater pecuniary interest in production accountability than does the federal government. Even in public land states which have substantial federal oil and gas production, the states are entitled to receipt of one-half the royalties on oil and gas produced from onshore federal leases and all of the severance, occupation and conservation taxes levied on that production, together with all of the severance, occupation and conservation taxes levied on state and fee production, and all of the royalties on state production within their borders.

Because of the states' very significant interest in accurate reporting of production, royalties and tax revenues, most states have developed sophisticated and cost-effective systems for ensuring production accountability based upon multiple required reports, most of which are filed on a monthly basis, backed up by detailed office and wellsite audits,

reserving field inspection and surveillance for areas with reporting discrepancies or accountability concerns.

While practices vary somewhat from state to state, most reporting and audit-based production accountability programs include multiple monthly reports, including operator's production reports by well, transporter's pickup and delivery reports by lease, purchaser's monthly reports by lease, gas plant monthly reports and tax reporting. When reported gas/oil ratios or water/oil ratios change significantly, or when volumes reported produced differ from those reported transported and purchased, field checking of gauges, seals and storage facilities is warranted. Frequent targeted field checking of problem facilities and of producers with histories of reporting problems, can provide an excellent deterrent to ongoing oil field thefts.

Recommendation. The IOGCC recommends that the BLM and the states evaluate existing state production accountability programs to determine whether those programs meet or exceed the performance of the BLM's production accountability program, and that the BLM defer to those state programs which provide equal or better levels of accountability.

Benefits. The IOGCC believes BLM's current system for production accountability is an area with great opportunity for streamlining and reinvention. It is very likely that many states can deliver higher levels of performance for production accountability through their existing programs, thereby saving the Bureau of Land Management a significant portion of the cost of their current production accountability activities. The regulated industry benefits by being relieved of the burden of one field inspection program.

Authorities. This is an area in which BLM policies, and possibly administrative rules, will need amendment. The IOGCC believes that FOGRMA requirements for production accountability can be met by means different from those now employed by the BLM.

III. PERMITTING - **States should have the opportunity to assume the responsibility for review and approval of applications for permits to drill (APD's) and sundry notices pursuant to designation of the states as lead agencies for APD approval.**

The BLM requires operators to submit an APD at least 30 days before drilling operations are to commence, as do most of the states. The APD includes a drilling plan, which describes the technical aspects of the well proposed, such as depth, casing and cementing programs, and a surface use plan, which describes road and drillpad location and construction, methods for waste containment and disposal, plans for reclamation and other pertinent information. The IOGCC states require the same types of APD information prior to drilling.

Recommendation. In most cases, review and approval of APDs and sundry notices is routine, and does not implicate extraordinary environmental concerns or raise resource planning issues. In those circumstances, the states should act as the lead agencies for the receipt and processing of APD's and sundry notices, and should perform necessary consultation with the BLM and other surface management agencies. The BLM would continue to post notice of the APD and would provide input to the state lead agency on surface use matters in accordance with its rules at 43 CFR 3162.2.

For applications which do trigger federal planning or special NEPA review processes, the BLM could remain the lead agency for application review. The BLM would prepare necessary environmental records of review or environmental assessments. The allocation of lead agency responsibility could be driven by geographic location, anticipated processing complexity or other factors agreed to by the BLM and the state involved.

Operator applications for contractual agreements such as communitization and unitization agreements, gas storage agreements, and development agreements would be filed directly with the Bureau of Land Management in its capacity as the representative of the federal mineral interest owners. Likewise, the BLM would retain its ability to protect its mineral interests through requiring diligent lease development and assessment of compensatory royalties.

Benefits. Efficiencies will be realized by relying upon the technical expertise of existing state regulatory programs for applications which do not require extended NEPA or planning review, relieving the Bureau of Land Management of workload in reviewing the technical aspects of APD's and sundry notices with associated cost savings. Industry applicants will need to deal directly with only one regulatory agency in the

permitting process. Timeliness accountability can be built into the permitting process by the establishment of permit review turnaround times in the memoranda of understanding between the BLM, the states and other jurisdictional agencies. Core land management and mineral interest owner functions will remain with the Bureau of Land Management.

Authorities. The IOGCC believes that adequate legal, regulatory and administrative authority already resides with the Bureau of Land Management to enter into memoranda of understanding with individual states to consolidate APD and sundry notice review and approval, with state agencies taking the lead in most cases.

IV. CONSERVATION **The the Bureau of Land Management should defer to existing state spacing, proration, and field production rules and orders made by state oil and gas regulatory boards and commissions.**

By letter dated January 26, 1996, Assistant Secretary Bob Armstrong agreed with an IOGCC letter to Secretary Babbitt dated September 26, 1995 recommending elimination of duplication of downhole regulations (copy attached). Specifically, Mr. Armstrong agreed, among other things, that; 1) Where states hold public hearings for the purpose of creating a record for the creation of field drilling, operation and production rules to prevent waste and protect correlative rights, the BLM and BIA will not establish a duplicate hearing process; 2) BLM and BIA representatives will seek to be included in the hearing process, without relinquishing their jurisdictional responsibilities; and 3) operations of an oil and gas field should be governed by one set of rules agreed to by all parties, regardless of whether leases are fee, state, Indian or Federal.

The IOGCC is cognizant of the contractual benefits afforded mineral interest owners by federal units created under the authority of Part 3180 of 43 CFR. However, the IOGCC believes that the mixed contractual and regulatory roles played by the BLM in federal units could be more clearly distinguished to the benefit of the public and federal mineral interest owners.

Recommendation. While the opportunity to create federal exploratory units and the contract and property rights established by unit creation should remain, the BLM should analyze the value of its role as a regulator of the units created

against its administrative costs of doing so. The IOGCC recommends that the BLM amend the Subpart 3186 model form to allow sharing of the federal regulatory role in federal units with the states. The IOGCC acknowledges that the BLM carries special trust responsibility to Indians and tribes which must be protected.

Benefits. The elimination of duplicate approval of field drilling, operations and production rules to prevent waste and protect correlative rights will relieve the Bureau of Land Management of technical and administrative workload, with resulting cost savings. The operating community will need to deal with only one regulatory agency for spacing and production rules matters. Sharing of federal regulatory involvement in federal units will also relieve the BLM of workload and result in cost savings, while preserving the benefits of unitization for all mineral interest owners.

Authorities. The IOGCC believes that BLM has adequate existing authority to incorporate the terms of Mr. Armstrong's January 26 letter into memoranda of understanding between the BLM and states. IOGCC also believes that the BLM has adequate authority to amend its own unitization rules, and defer to existing state pooling and unitization administration.

V. OVERSIGHT Accountability for achievement of the objectives of the oil and gas regulatory program should be ensured through performance-based measurement of program implementation results.

The IOGCC is cognizant the the BLM must be able to ensure that the objectives of its statutory mandates are met. Ensuring that "..federal statutes and regulations are uniformly interpreted.." as proposed by Instruction Memorandum No. 96-134 is the old, and discredited, oversight method which measures inputs rather than outcomes of program implementation. Attempting to control what state or federal program implementers think federal rules mean will have minimal effect, compared to reaching agreement on and commitment to the desired outcomes of program implementation. Direct measurement of program success occurs by establishing specific performance standards for program implementation, agreed to by both BLM and the states, which are quantifiable and reportable.

Recommendation. The states and the BLM should first establish the objectives and measurements of successful oil and gas program implementation. The conduct of oversight should be based on periodic meetings to discuss progress, identify problems and develop resolutions. Key indicators should be reported annually in a format which facilitates compilation of data for reports to Congressand the public, and for budget preparation. In identifying indicators of program success, reliance on existing data sources should be emphasized. The states' files and shecords would be open for inspection by the BLM at any time, or could be routinely transmitted to BLM. The IOGCC data standardization committee will work with the BLM and the states to assist the BLM in the maintenance of the AIRS/AFMSS data base.

Benefits. A performance-based, objective-driven oversight program will avoid duplication of effort by the BLM and micro-management of state implementation, while ensuring a uniformly high level of program performance from state to state. Uniformity of the quality of performance should be the objective of oversight, rather than uniformity of activities or "interpretation" of federal rules. Oversight can be conducted by the BLM personnel responsible for the contractual and property management of federal oil and gas resources. The EPA Underground Injection Control program provides a good model of oversight of a federally-delegated regulatory program.

Authorities. The BLM has authority to establish accountability and quality control requirements in memoranda of understanding with states.

VI FUNDING Federal funding should be provided to states, as needed, in amounts commensurate with the additional workload assumed by the states.

Cost savings is an important objective of IOGCC's proposal. Funding for state implementation of the existing federal regulatory program may actually exceed current BLM funding levels. In order to achieve savings, the states and the BLM must depart from the initial BLM proposal that states replicate the federal program, and discuss the merger of state and federal programs in ways that take advantage of existing duplication and the most efficient methodology. In states with overlapping regulation, the additional workload assumed by the state will be small in comparison to the savings achievable by the BLM. In states with little overlap, re-engineering of

processes holds the greatest opportunity for savings. The IOGCC believes that substantial savings of BLM's costs of program operation are possible.

Recommendation. Federal funding of state assumption of federal oil and gas regulatory responsibilities should be negotiated on a state-by-state basis. The mechanisms considered for funding should include, but not be limited to, state regulatory grants and adjustment of the states' administrative cost share.

CONCLUSION

The IOGCC urges the BLM to engage the states in comprehensive discussions and analyses of state and federal oil and gas regulatory programs to identify opportunities for elimination of duplication and greater efficiency and cost savings, and to streamline and consolidate programs where it makes sense to do so. While the details of agreements must be worked out state by state, The IOGCC believes a joint steering committee must be formed to establish schedules, obtain industry and citizen input, coordinate efforts and assist the BLM and the states in drafting and consummating memoranda of agreement to realize the gains available. Vigorous and unequivocal support of this effort by the IOGCC, its member states and the Bureau of Land Management will be necessary for success.

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UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

June 20, 1996

In Reply Refer To:
JIEO (310)

Ref: IM 96-110, IM 94-17

EMS TRANSMISSION 6/21/96
Instruction Memorandum No. 96-134
Expires: 09/30/97

To: All State Directors

From: Director

Subject: Inspection and Enforcement Program Transfer to State Governments
DD: 07/10/96; 8/30/96

ISSUE: Establishment of uniform standards and procedures for transferring oil and gas inspection and enforcement (I&E) responsibilities to individual State Governments.

OBJECTIVE: Provide guidance to State Directors on standards and procedures that need to be addressed when negotiating with State Governments on the transfer of any I&E responsibilities. This memorandum is not a blueprint. It is intended to be a first step to provide specific guidance embodying transfer principles.

BACKGROUND: The Bureau's REGO II report on the transfer of the I&E responsibility was released in April 1996. The report recommended that State Directors should meet with State Administrators to identify cost savings and efficiencies through the elimination of duplication and streamlining procedures in the I&E program. The report stated that avenues exist where States can obtain the I&E functions. These avenues are cooperative agreements and delegation of authority under Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), implemented through 43 CFR Subparts 3190, 3191 and 3192.

On May 21, 1996, the Director issued instruction memorandum (IM) 96-110 outlining the principles that must be followed when negotiating with States to implementing the BLM's REGO II proposal. The principles outlined in IM-96-110 were as follows:

-All delegations to inspect Federal leases will require that the States inspect against Federal standards;

-States will not be granted delegation if the action will not produce a cost savings or eliminate duplication of effort;

-States will not inspect Indian leases (FOGRMA prohibits this without the consent of the Indian mineral owner.); and

-The BLM will conduct oversight of State inspection activities. The BLM will retain adequate monitoring, oversight, and resumption authority with respect to State initiated enforcement actions to ensure Federal statutes and regulations are uniformly interpreted.

-State Directors will recommend minimum standards for delegation of authority or cooperative agreements, during their discussions with individual States.

Included as an attachment to the IM 96-110, was a resolution of the Interstate Oil and Gas Compact Commission (IOGCC) where they support discussions between BLM and individual States to eliminate duplication, streamline, simplify and consolidate Federal and State oil and gas regulatory programs that will result in a savings to the taxpayer. During a meeting between the Director and IOGCC on June 12, 1996, in Las Vegas, Nevada, the IOGCC expressed concerns that IM-96-110 was unclear as to: 1) how BLM State Directors were to proceed in conducting negotiations and 2) what items were to be covered in individual agreements. The IOGCC also expressed concern that negotiations with individual States would not be consistent from state-to-state. They recommended that a person be designated by BLM to be present during negotiations and assist State Directors with agreements.

IMPLEMENTATION: We agree with the IOGCC that there needs to be a central point of contact to ensure that negotiations and agreements are consistent. We have designated Lonny Bagley, Washington Office, Inspection and Enforcement Specialist, to be that person. Mr. Bagley will be available to facilitate negotiations between State Directors and individual States. Also, to ensure consistency, all agreements must be reviewed and approved by the Director prior to their implementation.

We must insure that the statutory requirements of the Mineral Leasing Act and FOGRMA are met. Under cooperative agreements and delegation of authority, the BLM is responsible for ensuring that the Secretary's responsibilities under FOGRMA and the Mineral Leasing Act are met. In order for the BLM to accomplish this responsibility the following specific items should be included in your negotiation:

1. States must include surface management as well as production accountability responsibility for inspection and enforcement.

2. FOGRMA required priorities will continue to form the basis of an inspection program.

3. State operated programs will follow BLM's schedules and priorities for all types of inspections

4. Identify method(s) to be used. This will include, but is not limited to inspection standards, the cost of conducting inspections, and the frequency of inspection.

4. Documentation of inspections. This will include hard copy files and automated systems. AIRS/AFMSS data entry must continue.

5. Enforcement procedures will follow federal law and regulations.

6. Inspector qualifications will conform to federal standards.

These items are simply a starting point for negotiations. The existing regulations at 43 CFR 3190-3192 provide additional detail. The I&E Strategy, issued under IM-94-17, also provides a basis considerations, including performance measures to be considered when developing individual agreements.

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SCHEDULE:

This memorandum will not include a target date for completing negotiations. All negotiations are individual and take on a pace of their own. However, the Headquartere Office continues to want a schedule for starting negotiations. If you have not already done so, send a memorandum to WO 300 containing the following information:

Date State Contacted
State Expression of Interest
Date agreed to for additional discussion
Other information as pertinent

This memorandum should be received in Washington no later than July 10, 1996.

In addition, by August 30, 1996, submit to WO 300 an outline of when you expect to have negotiations completed and an indication of whether you believe a delegation of inspection and enforcement authority will be consummated.

COORDINATION: To determine if State Governments are interested in performing inspection and enforcement functions on Federal lands, please petition your respective States and inquire as to their interest. As stated above, also notify Lonny Bagley, MT-920 at (406) 255-2847, of any scheduled meetings. Proposal(s) must be reviewed and approved by WO-300.

MANUAL/HANDBOOK: N/A.

BUDGET IMPLICATION: None.

CONTACT PERSON: Questions concerning this subject should be directed to Hord Tipton (202) 208-4201 or Lonny Bagley (406) 255-2847.

Signed
W. Hord Tipton
Assistant Director
Resource Use and
Protection

Authenticated
Robert M. Williams
Directives Team,WO530

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
New Mexico State Office
1474 Rodeo Rd.
P.O. Box 27115
Santa Fe, New Mexico 87502-0115

IN REPLY REFER TO:
3160 (93200)

Mike Smith -
please handle appropriately
- Thanks, Pat
07/31/96

Honorable Frank Keating
Governor, State of Oklahoma
State Capitol Building
Oklahoma City, OK 73105

Dear Governor Keating:

The Bureau's Reinventing Government II (REGO II) report on the transfer of the inspection and enforcement (I&E) responsibility was released in April 1996. It contained relevant information on the technical and operational aspects of the I&E and environmental compliance programs. The report recommended that State Directors should meet with State Administrators to identify cost savings and efficiencies through the elimination of duplication and streamlining procedures in the I&E program. The report stated that avenues exist where States can obtain the I&E functions. These avenues are cooperative agreements and delegation of authority under Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), implemented through 43 CFR Subparts 3190, 3191, and 3192.

The May 7, 1996, resolution of the Interstate Oil and Gas Compact Commission (IOGCC) supports discussions between the Bureau of Land Management (BLM) and individual States. Discussions suggested by the resolution include elimination of duplication, streamlining, and simplification and consolidation of Federal and State oil and gas programs that will result in a savings to the taxpayer.

Pursuant to these documents, I would like to afford you the opportunity to accept or decline this request that we enter into formal negotiations to transfer the BLM's I&E functions on Federal lands to your State.

Under cooperative agreements and delegation of authority, the BLM is responsible for ensuring that the Secretary of the Department of Interior's responsibilities under FOGRMA and the Mineral Leasing Act are met. In order for the BLM to accomplish this responsibility the following specific items must be included in any negotiations:

Post-it® Fax Note 7671	Date 8/1	# of pages ▶ 2
To Christine	From Mike Smith	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

1. States must include surface management as well as production accountability responsibility for inspection and enforcement.

2. FOGRMA required priorities will continue to form the basis of an inspection program.

3. State operated programs will follow BLM's schedules and priorities for all types of inspections.

4. Identification of methods to be used. This must include, but not be limited to inspection standards, the cost of conducting inspections, and the frequency of inspection.

5. Hard copy and automated documentation of inspections must continue.

6. Enforcement procedures must follow federal law and regulations.

7. Inspector qualifications must conform to federal standards.

8. States will not be granted delegation if the action will not produce a cost savings or eliminate duplication of effort.

9. The BLM will conduct oversight of State inspection activities.

10. The BLM will retain adequate monitoring, oversight, and resumption authority with respect to State initiated enforcement actions to ensure Federal statutes and regulations are uniformly interpreted.

These items are simply a starting point for negotiations, and are not intended to be a blueprint.

Please notify me of your decision at your earliest convenience so that any necessary negotiating teams may be established and meetings may be scheduled. You may direct your response to the address on the letterhead, attention: Mr. Steve Salzman. Telephone inquiries may be directed to either Mr. Salzman at (505) 438-7409 or to Mr. Larry Bray in our Roswell Office at (505) 627-0250.

Sincerely,

William C. Calkins

William C. Calkins
State Director

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